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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOHN RODRIGUEZ,

Defendant and Appellant.

E073975

(Super.Ct.No. FVA1201329)

OPINION

APPEAL from the Superior Court of San Bernardino County. Daniel W.

Detienne, Judge. Affirmed.

Taylor L. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant David John Rodriguez pled guilty to second degree commercial burglary. (Pen. Code,¹ § 459.) A trial court placed him on probation and later mandatory supervision. He violated both. The court eventually sentenced him to three years in county prison, with credit for time served. It subsequently corrected his custody credits.

Defendant filed a notice of appeal. We affirm.

PROCEDURAL BACKGROUND

Defendant was charged by felony complaint with second degree commercial burglary (§ 459, count 3) and forgery (§ 470, subd. (d), count 4).² Pursuant to a plea agreement, he pled guilty to count 3, in exchange for being placed on probation for three years, under specified conditions. On October 15, 2013, the court placed him on probation, in accordance with the agreement, and dismissed the remaining count.

On February 20, 2014, defendant pled no contest to forgery (§ 476) in another case. He also admitted that he violated his probation in the instant case. The court found him in violation but reinstated him on probation.

On or about January 15, 2016, the San Bernardino County Probation Department (the probation department) filed a petition for revocation of probation. The court granted the petition and issued a bench warrant for defendant's arrest. The matter was referred to

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

² Counts 1 and 2 were alleged against codefendant Arthur Lopez.

the probation department, which recommended that defendant be sentenced to two years in county prison.

On September 14, 2017, the court held a probation revocation hearing, and defendant admitted he violated his probation.³ The court sentenced him to three years in county prison, with credit for time served of 300 days. However, it suspended the remaining 795 days and placed him on mandatory supervision.

On or about April 27, 2018, the probation department filed a petition for revocation of mandatory supervision, which the court granted on May 18, 2018.

On May 17, 2019, the court held a hearing. It first heard defendant's *Marsden*⁴ motion and denied it. It then proceeded to find defendant in violation of his mandatory supervision. The court revoked his mandatory supervision and imposed the sentence previously suspended.⁵ It sentenced him to county prison for three years, with credit for time served of 405 days (203 actual and 202 conduct), plus 236 days of mandatory supervision, for a total of 641 days of credits.⁶

³ Defendant admitted he violated his probation in the instant case, as well as another case.

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

⁵ When imposing the sentence, the court erroneously referred to the case number as FWV1201329-2. The record shows that the case number is actually FVA1201329.

⁶ The court sentenced defendant on the other case at the same time and ordered the sentences to run concurrent.

On October 22, 2019, the court held a hearing to modify defendant's custody credits. Defendant argued that the credit memorandum sent to the jail did not show the correct amount of credits. He stated that, as of that date (October 22, 2019), he had 361 actual days, 360 conduct credit days, and 236 mandatory supervision days. Thus, he asserted that he should have a total of 957 credits as of that day. The court asked if the prosecutor wanted to stipulate to the number of credits defendant was requesting, and he said yes. The court announced that it was correcting defendant's credits to award a total of 957 days.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and one potential arguable issue: whether the court erred in granting the custody credits defendant requested. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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FIELDS
J.

We concur:

MILLER
Acting P. J.

CODRINGTON
J.